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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY *CP*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AURORA LOAN SERVICE, LLC,) NO. CV 12-7244 UA (DUTYx)
Plaintiff,)
v.) ORDER SUMMARILY REMANDING
AUDREY PARK, et al.,) IMPROPERLY-REMOVED ACTION
Defendants.)

The Court will remand this unlawful detainer action to state court summarily because defendant Audrey Park ("defendant") removed it improperly.

On August 23, 2012, defendant, having been sued in what appears to be a routine unlawful detainer action in California state court, lodged a Notice Of Removal of that action to this Court and also presented an application to proceed in forma pauperis. The Court has denied the latter application under separate cover because the action was not properly removed. To prevent the action from remaining in jurisdictional limbo, the Court issues this Order to remand the action to state court.

Plaintiff could not have brought this action in federal court in the first place, in that defendant does not competently allege facts supplying either diversity or federal-question jurisdiction, and therefore removal is improper. 28 U.S.C. § 1441(a);¹ see Exxon Mobil Corp v.

¹ 28 USC § 1441(a) provides that:

Except as otherwise expressly provided by Act of Congress, any civil action

1 Allapattah Svcs., Inc., 545 U.S. 546, 563, 125 S.Ct. 2611, 2623 (2005). As an initial matter, the
 2 state court complaint attached to the Notice of Removal asserts only a single cause of action for
 3 unlawful detainer pursuant to California Code of Civil Procedure § 1166a. (See Notice of
 4 Removal, Exh. A at 3).² Accordingly, the state court complaint discloses no federal statutory or
 5 constitutional question. See Wescom Credit Union v. Dudley, 2010 WL 4916578, at *2 (C.D. Cal.
 6 2010) (“An unlawful detainer action does not arise under federal law.”); Indymac Federal Bank,
 7 F.S.B. v. Ocampo, 2010 WL 234828, at *2 (C.D. Cal. 2010) (“No federal claim is alleged in the
 8 Complaint[]” where “[t]he Complaint contains a single cause of action for unlawful detainer.”).

9 Moreover, the Court finds unpersuasive defendant’s contention that federal question
 10 jurisdiction exists because plaintiff “denied [defendant] Due Process, in violation of the 14th
 11 Amendment, [and] may have violated the Federal law, Protecting Tenants at Foreclosure Act[,]”
 12 12 U.S.C. § 5220 (“PTFA”). (Notice of Removal at 2). It is well-settled that “a case may *not* be
 13 removed to federal court on the basis of a federal defense . . . even if the defense is anticipated
 14 in the plaintiff’s complaint, and even if both parties concede that the federal defense is the only
 15 question truly at issue.” Caterpillar Inc. v. Williams, 482 U.S. 386, 393, 107 S.Ct. 2425, 2430
 16 (1987) (italics in original). Nor can a counterclaim “serve as the basis for [§ 1331³] ‘arising under’
 17 jurisdiction.” Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 830-32, 122
 18 S.Ct. 1889, 1893-94 (2002). Thus, to the extent defendant’s defenses or counterclaims to the
 19 unlawful detainer action are based on alleged violations of federal law, those allegations do not
 20 provide a basis for federal-question jurisdiction. See Williams v. Singh, 2012 WL 1414333, at *1
 21 (E.D. Cal. 2012) (“there is no subject matter jurisdiction” where defendant’s removal petition states

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 23 brought in a State court of which the district courts of the United States have
 24 original jurisdiction, may be removed by the defendant or the defendants, to
 25 the district court of the United States for the district and division embracing
 26 the place where such action is pending.

27 ² For ease of reference, the court labels and refers to the pages in Exh. A of the Notice of
 28 Removal in consecutive order, i.e., 1-5.

³ 28 U.S.C. § 1331 provides that “[t]he district courts shall have original jurisdiction of all civil
 28 actions arising under the Constitution, laws, or treaties of the United States.”

1 that defendant filed a demurrer in state court under the PTFA, because "such a defense cannot
 2 provide a sufficient basis to remove the action to federal court[]"); Bank of New York Mellon v.
 3 Germanelo, 2012 WL 1536543, at *2 (N.D. Cal. 2012) (no federal question jurisdiction where
 4 defendant filed a demurrer in state court based on plaintiff's alleged noncompliance with the PTFA
 5 because "Defendant's defenses or counterclaims to the unlawful detainer action . . . do not
 6 provide a basis for federal jurisdiction").

7 Finally, even if complete diversity of citizenship exists, the amount in controversy does not
 8 exceed the diversity-jurisdiction threshold of \$75,000. See 28 U.S.C. §§ 1332,⁴ 1441(b).⁵ On the
 9 contrary, the state court complaint recites that the amount in controversy does not exceed
 10 \$10,000. (See Notice of Removal, Exh. A at 3). Moreover, "[i]n unlawful detainer actions, . . . the
 11 amount of damages sought in the complaint, not the value of the subject real property, determines
 12 the amount in controversy." Litton, 2011 WL 204322, at *2 (noting that "[i]n unlawful detainer
 13 actions such as this one, California courts have noted that the right to possession alone is
 14 involved – not title to the property[]") (internal quotation marks, brackets and citation omitted).
 15 Here, plaintiff's complaint alleges damages for the reasonable value of the use and occupancy
 16 of the subject property, i.e., plaintiff seeks \$50.00 per day from expiration of the notice to vacate
 17 on or about December 3, 2011, through the date on which defendant relinquishes possession.
 18 (See Notice of Removal, Exh. A at 4-5). Because these damages sought from the unlawful
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 21 ⁴ 28 U.S.C. § 1332(a) provides that diversity jurisdiction exists only in suits between citizens
 22 of different states and "where the matter in controversy exceeds the sum or value of \$75,000,
 23 exclusive of interest and costs."

24 ⁵ 28 U.S.C. § 1441(b) provides that:

25 (1) In determining whether a civil action is removable on the basis of the
 26 jurisdiction under section 1332(a) of this title, the citizenship of defendants
 27 sued under fictitious names shall be disregarded.

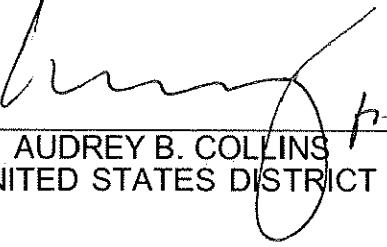
28 (2) A civil action otherwise removable solely on the basis of the jurisdiction
 29 under section 1332(a) of this title may not be removed if any of the parties
 in interest properly joined and served as defendants is a citizen of the State
 in which such action is brought.

1 possession of the property do not exceed \$75,000 (thus far, they would total approximately
2 \$13,500), this Court lacks diversity jurisdiction. See 28 U.S.C. § 1332(a); St. Paul Mercury Indem.
3 Co. v. Red Cab Co., 303 U.S. 283, 291, 58 S.Ct. 586, 591 (1938) (the status of the case as
4 disclosed by the plaintiff's complaint is controlling for purposes of removal).

5 Accordingly, IT IS ORDERED that:

6 1. This matter shall be REMANDED to the Superior Court of California, Ventura County,
7 Simi Valley - East County Courthouse, 3855-F Alamo Street, Simi Valley, CA 93063, for lack of
8 subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).
9 2. The Clerk shall send a certified copy of this Order to the state court.
10 3. The Clerk shall serve copies of this Order on the parties.

11 DATED: 8/31, 2012.

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13 AUDREY B. COLLINS
14 CHIEF UNITED STATES DISTRICT JUDGE
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